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9 San Jose Police Officers' Association

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA

11 COUNTY OF SANTA CLARA

12  
13 SAN JOSE POLICE OFFICERS'  
ASSOCIATION,

14 Plaintiff,

15 v.

16 CITY OF SAN JOSE, BOARD OF  
17 ADMINISTRATION FOR POLICE  
AND FIRE DEPARTMENT  
18 RETIREMENT PLAN OF CITY OF  
SAN JOSE, and DOES 1-10,  
19 inclusive,

20 Defendants.

No.

**DECLARATION OF ROBERT IMOBERSTEG  
IN SUPPORT OF SJPOA'S *EX PARTE*  
APPLICATION FOR TEMPORARY  
RESTRAINING ORDER AND ORDER TO  
SHOW CAUSE REGARDING PRELIMINARY  
INJUNCTION**

21  
22 I, Robert Imobersteg, declare and say:

23 1. I am employed by the City of San Jose as a Police Sergeant and am a  
24 member of the SAN JOSE POLICE OFFICERS' ASSOCIATION ("SJPOA"). I have  
25 worked as both a Police Officer and, later, a Police Sergeant for the City of San Jose since  
26 1993. As a result of my employment with the City of San Jose, I am familiar with the  
27 facts in this matter, as well as those set forth in this Declaration. If called upon as a  
28 witness, I could and would testify competently to these facts.

1           2. I submit this declaration in support of the SJPOA's *Ex Parte* Application  
2 for Temporary Restraining Order and Order to Show Cause Regarding Preliminary  
3 Injunction ("*Ex Parte* Application for TRO").

4           3. In July 2011, San Jose Police Officers agreed to a 10% pay cut that will  
5 be in effect until at least June 2013. This pay cut is in addition to increases to employee  
6 contributions for retirement benefits (including increases to employee-paid retirement and  
7 retiree health care costs) that amount to an approximate additional 17% decrease to my  
8 take-home pay.

9           4. I am informed that this voluntary pay cut, combined with increases to the  
10 employee-paid retirement/retiree health care costs in recent years, have made San Jose's  
11 police officers among the lowest paid police in the region taking into account total  
12 compensation. We currently pay more into our retirement than any other police agency in  
13 the region. Effective June 24, 2012, we are slated for an additional approximate 2%  
14 decrease to take home pay which will put us even farther behind other law enforcement  
15 agencies in the region.

16           5. I am married with three children.

17           6. The prior pay reduction and increases to employee-paid retirement/retiree  
18 health care costs have forced me to cut back on most non-essential spending in order to  
19 have enough money each month to pay my family's living expenses. In order to pay my  
20 bills for necessities, including our mortgage, I have been unable to save any extra money  
21 for emergencies. I simply cannot afford to take any further pay cuts. In addition, the  
22 decreases to my total take home pay that have already been implemented skewed my debt-  
23 to-income ratio such that I was barely able to qualify to refinance my house even though I  
24 am current with all payments. I was advised that if my income decreases any further, I  
25 may not have the option to refinance again.

26           7. Measure B, if implemented, would require that I and other San Jose  
27 police officers begin paying 50% of the costs of retiree healthcare, including both the  
28 normal cost and unfunded liability. Currently, the unfunded liability percentage is 32%

1 which means that my salary immediately will be decreased by at least another 9% for the  
2 unfunded retiree health care costs (because we already paying 7% of the unfunded retiree  
3 health care costs) although I will receive the same level of benefits from the City. If this  
4 occurs, I have no way to keep up with my family's basic living expenses. We have  
5 already bottomed out financially and, since refinancing is no longer an option, we will  
6 have no way to make up the difference in the loss of income.

7 8. I have also been informed that the City will start charging me for 50% of  
8 the unfunded pension liability (also currently set at 32%) although the implementation of  
9 the unfunded pension liability charges will be phased in over time. The implementation  
10 of this additional decrease will make my financial situation even more precarious.

11 9. The cumulative impact of the pay reduction along with the increases to  
12 employee-paid retirement/retiree health care costs has forced many officers to take  
13 positions with other police agencies in the region. I know several officers who have  
14 already left the department and many more who are considering leaving should additional  
15 decreases to pay and/or pension benefits occur.

16 10. In anticipation of the passage of Measure B, I have already started  
17 looking for a job at other law enforcement agencies and have even considered leaving law  
18 enforcement altogether. However, I am extremely reluctant to do so because I will lose  
19 five years worth of retirement benefits if I leave San Jose one day prior to my 50<sup>th</sup>  
20 birthday. I am currently 44 years old. Under the current pension system, I can retire from  
21 the City of San Jose at either 50 years old or with 25 years of service (which will happen  
22 at the same time for me) and be able to draw pension benefits immediately. However, if I  
23 am forced to find new employment, I will have to wait until 55 to start drawing those  
24 earned pension benefits. Because my family simply cannot afford any further pay  
25 decreases, I will have no choice but to leave my job now so that I can pay for my family's  
26 basic living expenses and forfeit five years of earned retirement benefits.

27 11. Measure B will also modify disability retirement for San Jose police  
28 officers, as detailed below, such that it will no longer be of any benefit to me. I consider

1 comprehensive disability retirement protection an absolutely crucial employment benefit  
2 for my line of work because police work is extremely physically demanding and  
3 dangerous. This is especially true for me because I have spent the majority of my career  
4 working in special operations conducting high risk police work with gangs, narcotics,  
5 armed suspects, etc. I would not have chosen a career in law enforcement and focused on  
6 such high risk assignments without the knowledge that my family's financial security  
7 would be protected in the event that I am disabled as a result of actions taken in the line of  
8 duty while performing my job protecting the citizens of San Jose.

9           12. Under the City of San Jose's current disability retirement plan for police  
10 officers, I would be deemed disabled if I am no longer able to perform duties within my  
11 peace officer classification (i.e. the normal duties of a police officer). Under the current  
12 system, if I was rendered disabled, I would be entitled to retirement disability payments of  
13 50% of my current salary for the first 20 years of service and an additional 4% for every  
14 year of service thereafter. The City explained these rights to me many times throughout  
15 my career, starting in the Police Academy, and I have counted on these rights throughout  
16 my career to protect my family's financial security should I be injured in the line of duty.

17           13. Measure B, if passed by San Jose electorate, would eviscerate the police  
18 disability retirement plan. My understanding is that instead of analyzing whether I will be  
19 able to perform police officer functions, the City will analyze whether I can perform the  
20 essential job functions of any position within the Police Department, including jobs that  
21 consist primarily of administrative tasks. If I am found to be physically able to perform  
22 the essential job functions of any position within the Police Department (even if I do not  
23 have the requisite training or skills for that position), my disability application will be  
24 denied. More troubling, if the job or jobs that I have been found to be able to perform are  
25 occupied, I will be terminated from city employment without any retirement benefits. The  
26 non-police jobs in the department are Alarm Technician (1 positions), Crime Prevention  
27 Specialist (5 positions), Latent Fingerprint Examiner (5 positions), and Police Artist (1  
28

1 position). I do not recall when any of these positions was vacant for any significant  
2 period of time.

3 14. If the changes delineated in the prior paragraph are implemented, it will  
4 have an immediate and catastrophic impact on me if I become disabled as a result of  
5 actions taken in the line of duty because it almost certainly eliminates the availability of  
6 any retirement pension. Essentially, the changes have all but guaranteed that I will be  
7 terminated and left without the means to support myself and my family as a result of being  
8 injured in the line of duty.

9 15. In light of this risk and the untenable position it places me and my  
10 colleagues in, if Measure B passes, I and (I am informed) many of my colleagues will  
11 look for law enforcement work at departments that maintain full disability retirement  
12 coverage, rather than risk being hung out to dry during such a time of need. Moreover, I  
13 and other officers will no longer volunteer for high-risk assignments as we have done in  
14 the past. I personally cannot, and will not, put my family's financial security at risk if  
15 Measure B passes by continuing to work the type of high risk assignments I have done  
16 throughout my career. In fact, I believe the San Jose Police Department will find it  
17 difficult, if not impossible, to find enough officers, not only to fill these crucial roles, but  
18 also to simply maintain an adequate force to fulfill its public-safety and crime-prevention  
19 roles. In addition, as a Sergeant responsible for other officers who conduct the high risk  
20 assignments under my command, I will be very reluctant to ask my officers to put their  
21 safety at jeopardy when I know they will have no recourse should they get injured. For  
22 example, when serving a search warrant in a house associated with gangs, drugs and  
23 weapons, how do I choose who should be the first person that goes through the door and  
24 risks being shot?

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1 I declare under penalty of perjury under the laws of the State of California that  
2 the foregoing is true and correct and that this declaration is executed this 30 day of  
3 May, 2012, SAN JOSE, California.

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